IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Ajmer Vidhyut Vitran Nigam Ltd. & Ors. **vs.** Ram Singh.

D.B. CIVIL SPECIAL APPEAL (W) NO.277/2007
against the order dt.31.1.2007 passed in
S.B. Civil Writ Petition No.392/2004.

Date of order : 18th April, 2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. Sumit Mehta for the appellant.

BY THE COURT:- (PER HON'BLE RAJESH BALIA, J.)

Heard learned counsel for the appellants.

This appeal is directed against the judgment of learned Single Judge dated 31st January, 2007 directing the appellant to consider the case of respondent-petitioner for compassionate appointment in place of his deceased adopted father Mithu Singh, who died while in service.

Said Mithu Singh had died while in service on 17.4.2001. The respondent-petitioner had applied for appointment on compassionate ground as his father was in service of appellant, who died while in service.

That application was first returned without assigning any reasons. By a letter dated 14.2.2002 the petitioner was told that his adoption is not according to law. Thereafter when the petitioner had got the payment of gratuity amount due to his deceased father, as his son he again renewed his application. The same was not responded to. Then he served a notice for demand of justice dated 19.5.2003. But he got no response thereto. Then he filed the writ petition.

In support of his status as adopted son of Mithu Singh, he had presented a registered deed signed by his adopted father Mithu Singh and natural father Datar Singh regarding the factum of his adoption to Mithu Singh. This document was not considered to be valid and the application was rejected.

The learned Single Judge found that the adoption deed is declaratory in nature and records that adoption was taken during the childhood of the applicant. First time in the reply to the writ petition, it was stated by the employer that since on the date of execution of adoption deed, the petitioner had crossed the age of 15 years and adoption of a person above 15 years of age is invalid.

This contention was not countenanced by the learned Single Judge on the ground that the adoption deed clearly relates to the declaration of adoption actually having been taken place in past during the childhood of the petitioner. The only contention raised on behalf of the respondents was thus, rejected and the

non-petitioner-appellants were directed to consider the case of the petitioner for giving him appointment on compassionate ground under the Rules as adopted son of deceased Mithu Singh . Hence, this appeal.

The learned counsel has contended that the adoption of the child above the age of 15 years is void and since the adoption deed has been executed on the date when he attained the age of 18 years, the adoption deed being contrary to law under the Hindu Adoption and Maintenance Act, 1956 it could not be taken notice of.

Having considered the provisions of Hindu Adoption & Maintenance Act, 1956 we are unable to sustain this contention.

Firstly Section 16 does not require that document evidencing adoption deed must be a document through which adoption has taken place that is to say an adoption that takes place through execution of an adoption deed. In fact, law envisages that an

adoption deed declares an event that has taken place in past. In other words, acknowledgement of some fact having been accomplished in past. The registered adoption deed in the present case recites the factum of adoption having taken place during the childhood of petitioner and not on the date the document is executed. Hence, this inference drawn by learned Single Judge cannot be held to be erroneous.

Secondly, section 5 of the Hindu Adoption and Maintenance Act only provides that any adoption made contrary to the provisions of Chapter shall be void. However Section 6 lays down the condition of valid adoption providing that the person adopting has the capacity, and also the right, to take in adoption the person giving in adoption has the capacity to do so and that the person adopted is capable of being taken in adoption; and that the adoption is made in compliance with the other conditions mentioned in that Chapter.

So far as the capacity of Mithu Singh to take a son in adoption and the capacity of Datar Singh to give

his son in adoption is concerned are facts not in dispute. The only ground of objection to the adoption is stated to be the completion of age of 15 years by the person to be adopted on the date of execution of adoption deed.

However, Section 10 clearly postulates that the capability of being taken in adoption and age is subject to the custom or usage applicable and is not in absolute terms. Coupled with this aspect of the matter, Section 16 provides that wherever any document registered under any law for time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.

In the present case, as we have noticed that the documents produced by the petitioner is signed by the adopted father Mithu Singh and also by the natural father of the petitioner regarding his consent for giving

the petitioner in adoption and document has been registered. Thus,in terms of Section 16 of the Act of 1956, it has to be presumed that the adoption has been made in compliance of the provisions. Hence, the adoption evidenced by such deed must be presumed to be in consonance with the provisions of Act. Wherever the Act has saved custom in this regard, in the very nature of things presumptions raised under Section 16 must take into account that factor also.

The adoption of a person above the age of 15 years is permitted under customs or usage applicable to the parties to the adoption. The direct effect of the presumption required to be raised under statute is that adoption is presumed to have been made in compliance with the provisions of the Act, when it is evidenced by registered document signed by the adoptive father and natural father.

Therefore, we are in agreement of the learned Single Judge that the application of the appellant Ram Singh could not have been rejected only on the ground

that he being not adopted son of the deceased Mithu Singh by refusing to recognize the adoption in terms of document, declaration of adoption signed by the adopted father and natural father of the applicant and duly registered in view of the clear provisions of Section 10 read with Sec.16 of the Hindu Adoption and Maintenance Act, 1956.

Accordingly, the appeal fails and is hereby dismissed.

[BHANWAROO KHAN], J. [RAJESH BALIA], J.

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